

SENATE BILL 564

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2004 Regular Session
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By: **Senators Grosfeld, Britt, Conway, Exum, Forehand, Frosh, Garagiola,
Giannetti, Gladden, Hollinger, Jones, Kelley, Lawlah, McFadden,
Middleton, Pinsky, Ruben, and Stone**

Introduced and read first time: February 6, 2004

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Juvenile Law - Competency**

3 FOR the purpose of requiring the juvenile court to order a certain evaluation of a
4 certain child under certain circumstances; requiring a certain evaluation to be
5 performed by a qualified expert; providing for the construction of a certain
6 provision of this Act; requiring certain legal pleadings to be served on certain
7 individuals and agencies; specifying certain procedures and conditions under
8 which an examination is to be conducted; requiring a qualified expert to
9 examine a certain child and prepare a certain report; requiring the qualified
10 expert to review certain records and consider certain factors; specifying the
11 contents of a certain report; specifying certain procedures for the filing of certain
12 reports; establishing that a failure to file a certain report may not be, in and of
13 itself, grounds for dismissal of a certain petition; authorizing counsel for the
14 child to be present during an examination of the child; requiring the
15 Department of Health and Mental Hygiene to take certain actions; specifying
16 certain procedures for a competency hearing; requiring the court to take certain
17 actions after the court makes a certain determination at a competency hearing;
18 authorizing the court to take certain actions after the court makes a certain
19 determination at a competency hearing; requiring a certain service provider to
20 file a certain report with the court; specifying that the court retains jurisdiction
21 over a certain child for a certain period; requiring the court to dismiss a certain
22 petition under certain circumstances; authorizing the court to order that certain
23 proceedings be instituted under certain circumstances; establishing that certain
24 hearings may be conducted without the presence of the child under certain
25 circumstances; specifying that certain statements, information, and reports are
26 not admissible in a proceeding except under certain circumstances; requiring
27 the Secretary of Health and Mental Hygiene and the Secretary of Juvenile
28 Services to jointly adopt certain regulations; defining certain terms; and
29 generally relating to the competency of a child to participate in certain
30 proceedings.

31 BY repealing and reenacting, with amendments,

32 Article - Courts and Judicial Proceedings

1 Section 3-8A-01
2 Annotated Code of Maryland
3 (2002 Replacement Volume and 2003 Supplement)

4 BY adding to
5 Article - Courts and Judicial Proceedings
6 Section 3-8A-17.1 through 3-8A-17.10
7 Annotated Code of Maryland
8 (2002 Replacement Volume and 2003 Supplement)

9 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
10 MARYLAND, That the Laws of Maryland read as follows:

11 **Article - Courts and Judicial Proceedings**

12 3-8A-01.

13 (a) In this subtitle the following words have the meanings indicated, unless
14 the context of their use indicates otherwise.

15 (b) "Adjudicatory hearing" means a hearing under this subtitle to determine
16 whether the allegations in the petition, other than allegations that the child requires
17 treatment, guidance or rehabilitation, are true.

18 (c) "Adult" means an individual who is at least 18 years old.

19 (d) "Child" means an individual under the age of 18 years.

20 (e) "Child in need of supervision" is a child who requires guidance, treatment,
21 or rehabilitation and:

22 (1) Is required by law to attend school and is habitually truant;

23 (2) Is habitually disobedient, ungovernable, and beyond the control of
24 the person having custody of him;

25 (3) Departs himself so as to injure or endanger himself or others; or

26 (4) Has committed an offense applicable only to children.

27 (f) "Citation" means the written form issued by a police officer which serves
28 as the initial pleading against a child for a violation and which is adequate process to
29 give the court jurisdiction over the person cited.

30 (g) "Commit" means to transfer legal custody.

31 (h) (1) "Community detention" means a program monitored by the
32 Department of Juvenile Services in which a delinquent child or a child alleged to be

1 delinquent is placed in the home of a parent, guardian, custodian, or other fit person,
2 or in shelter care, as a condition of probation or as an alternative to detention.

3 (2) "Community detention" includes electronic monitoring.

4 (I) "COMPETENCY HEARING" MEANS A HEARING UNDER THIS SUBTITLE TO
5 DETERMINE WHETHER A CHILD ALLEGED TO BE DELINQUENT IS MENTALLY
6 COMPETENT TO PARTICIPATE IN A WAIVER HEARING UNDER § 3-8A-06 OF THIS
7 SUBTITLE, AN ADJUDICATORY HEARING UNDER § 3-8A-18 OF THIS SUBTITLE, A
8 DISPOSITION HEARING UNDER § 3-8A-19 OF THIS SUBTITLE, OR A VIOLATION OF
9 PROBATION HEARING.

10 [(i)] (J) "Court" means the circuit court for a county sitting as the juvenile
11 court.

12 [(j)] (K) "Custodian" means a person or agency to whom legal custody of a
13 child has been given by order of the court, other than the child's parent or legal
14 guardian.

15 [(k)] (L) "Delinquent act" means an act which would be a crime if committed
16 by an adult.

17 [(l)] (M) "Delinquent child" is a child who has committed a delinquent act and
18 requires guidance, treatment, or rehabilitation.

19 [(m)] (N) "Detention" means the temporary care of children who, pending court
20 disposition, require secure custody for the protection of themselves or the community,
21 in physically restricting facilities.

22 (O) "DEVELOPMENTAL DISABILITY" MEANS A SEVERE CHRONIC DISABILITY
23 OF A CHILD THAT:

24 (1) IS ATTRIBUTABLE TO A PHYSICAL OR MENTAL IMPAIRMENT, OTHER
25 THAN THE SOLE DIAGNOSIS OF MENTAL ILLNESS, OR TO A COMBINATION OF
26 MENTAL AND PHYSICAL IMPAIRMENTS;

27 (2) IS LIKELY TO CONTINUE INDEFINITELY;

28 (3) RESULTS IN AN INABILITY TO LIVE INDEPENDENTLY WITHOUT
29 EXTERNAL SUPPORT OR CONTINUING AND REGULAR ASSISTANCE; AND

30 (4) REFLECTS THE NEED FOR A COMBINATION AND SEQUENCE OF
31 SPECIAL INTERDISCIPLINARY OR GENERIC CARE, TREATMENT, OR OTHER SERVICES
32 THAT ARE INDIVIDUALLY PLANNED AND COORDINATED FOR THE CHILD.

33 (P) "DEVELOPMENTAL IMMATURITY" MEANS THAT THE AGE OR MATURITY
34 LEVEL PREVENTS A CHILD FROM HAVING:

35 (1) A BASIC COMPREHENSION OF THE PURPOSE AND NATURE OF THE
36 PROCEEDINGS;

1 (2) THE CAPACITY TO PROVIDE RELEVANT INFORMATION TO COUNSEL
2 AND TO PROCESS INFORMATION; AND

3 (3) THE ABILITY TO APPLY INFORMATION TO THE CHILD'S OWN
4 SITUATION IN A MANNER THAT IS NEITHER DISTORTED NOR IRRATIONAL.

5 [(n)] (Q) "Disposition hearing" means a hearing under this subtitle to
6 determine:

7 (1) Whether a child needs or requires guidance, treatment, or
8 rehabilitation; and if so

9 (2) The nature of the guidance, treatment, or rehabilitation.

10 (R) "INCOMPETENT TO PROCEED" MEANS THAT A CHILD IS NOT ABLE TO:

11 (1) UNDERSTAND THE NATURE OR OBJECT OF THE PROCEEDING; OR

12 (2) ASSIST IN THE CHILD'S DEFENSE.

13 [(o)] (S) "Intake officer" means the person assigned to the court by the
14 Department of Juvenile Services to provide the intake services set forth in this
15 subtitle.

16 [(p)] (T) "Mentally handicapped child" means a child who is or may be
17 mentally retarded or mentally ill.

18 (U) (1) "MENTAL DISORDER" MEANS A BEHAVIORAL OR EMOTIONAL
19 ILLNESS THAT RESULTS FROM A PSYCHIATRIC OR NEUROLOGICAL DISORDER.

20 (2) "MENTAL DISORDER" INCLUDES A MENTAL ILLNESS THAT SO
21 SUBSTANTIALLY IMPAIRS THE MENTAL OR EMOTIONAL FUNCTIONING OF A CHILD
22 AS TO MAKE CARE OR TREATMENT NECESSARY OR ADVISABLE FOR THE WELFARE OF
23 THE CHILD OR FOR THE SAFETY OF THE CHILD OR PROPERTY OF ANOTHER.

24 (3) "MENTAL DISORDER" DOES NOT INCLUDE MENTAL RETARDATION.

25 (V) "MENTAL RETARDATION" MEANS A DEVELOPMENTAL DISABILITY THAT IS
26 EVIDENCED BY INTELLECTUAL FUNCTIONING THAT IS SIGNIFICANTLY BELOW
27 AVERAGE AND IMPAIRMENT IN THE ADAPTIVE BEHAVIOR OF A CHILD.

28 [(q)] (W) "Party" includes a child who is the subject of a petition or a peace
29 order request, the child's parent, guardian, or custodian, the petitioner and an adult
30 who is charged under § 3-8A-30 of this subtitle.

31 [(r)] (X) "Peace order proceeding" means a proceeding under § 3-8A-19.2 or §
32 3-8A-19.4 of this subtitle.

33 [(s)] (Y) "Peace order request" means the initial pleading filed with the court
34 under § 3-8A-19.1 of this subtitle.

1 [(t)] (Z) "Petition" means the pleading filed with the court under § 3-8A-13 of
2 this subtitle alleging that a child is a delinquent child or a child in need of supervision
3 or that an adult violated § 3-8A-30 of this subtitle.

4 (AA) "QUALIFIED EXPERT" MEANS A LICENSED PSYCHOLOGIST OR
5 PSYCHIATRIST WHO HAS BEEN CERTIFIED BY THE DEPARTMENT OF HEALTH AND
6 MENTAL HYGIENE TO HAVE EXPERTISE IN CHILD DEVELOPMENT, WITH TRAINING IN
7 FORENSIC EVALUATION PROCEDURES THROUGH FORMAL INSTRUCTION,
8 PROFESSIONAL SUPERVISION, OR BOTH, AND WHO IS:

9 (1) FAMILIAR WITH THE COMPETENCY STANDARDS CONTAINED IN THIS
10 SUBTITLE; AND

11 (2) FAMILIAR WITH THE TREATMENT, TRAINING, AND RESTORATION
12 PROGRAMS FOR CHILDREN THAT ARE AVAILABLE IN THIS STATE.

13 [(u)] (BB) "Respondent" means the individual against whom a petition or a
14 peace order request is filed.

15 [(v)] (CC) (1) "Shelter care" means the temporary care of children in
16 physically unrestricting facilities.

17 (2) "Shelter care" does not mean care in a State mental health facility.

18 [(w)] (DD) (1) "Victim" means:

19 (i) A person who suffers direct or threatened physical, emotional,
20 or financial harm as a result of a delinquent act; or

21 (ii) An individual against whom an act specified in § 3-8A-19.1(b)
22 of this subtitle is committed or alleged to have been committed.

23 (2) "Victim" includes a family member of a minor, disabled, or a deceased
24 victim.

25 (3) "Victim" includes, if the victim is not an individual, the victim's agent
26 or designee.

27 [(x)] (EE) "Violation" means a violation for which a citation is issued under:

28 (1) § 10-113, § 10-114, § 10-115, or § 10-116 of the Criminal Law Article;

29 (2) § 10-108 of the Criminal Law Article; or

30 (3) § 26-103 of the Education Article.

31 [(y)] (FF) "Witness" means any person who is or expects to be a State's witness.

1 3-8A-17.1.

2 (A) (1) AT ANY TIME AFTER A PETITION ALLEGING THAT A CHILD HAS
3 COMMITTED A DELINQUENT ACT IS FILED WITH THE COURT UNDER THIS SUBTITLE,
4 THE COURT ON ITS OWN MOTION, OR ON MOTION OF THE CHILD'S COUNSEL OR THE
5 STATE'S ATTORNEY, SHALL STAY ALL PROCEEDINGS AND ORDER AN EVALUATION OF
6 THE CHILD'S MENTAL CONDITION AND DEVELOPMENTAL LEVELS IF THE COURT
7 FINDS THAT:

8 (I) THERE IS PROBABLE CAUSE TO BELIEVE THAT THE CHILD HAS
9 COMMITTED THE DELINQUENT ACT; AND

10 (II) THERE IS REASON TO BELIEVE THAT THE CHILD MAY BE
11 INCOMPETENT TO PROCEED WITH A WAIVER HEARING UNDER § 3-8A-06 OF THIS
12 SUBTITLE, AN ADJUDICATORY HEARING UNDER § 3-8A-18 OF THIS SUBTITLE, A
13 DISPOSITION HEARING UNDER § 3-8A-19 OF THIS SUBTITLE, OR A VIOLATION OF
14 PROBATION HEARING.

15 (2) AN EVALUATION ORDERED UNDER SUBSECTION (A) OF THIS
16 SECTION SHALL BE PERFORMED BY A QUALIFIED EXPERT.

17 (3) THIS SUBSECTION MAY NOT BE CONSTRUED TO PROHIBIT THE
18 STATE OR THE CHILD FROM CALLING OTHER EXPERT WITNESSES TO TESTIFY AT A
19 COMPETENCY HEARING.

20 (B) ANY MOTION QUESTIONING THE CHILD'S COMPETENCY TO PROCEED, AND
21 ANY SUBSEQUENT LEGAL PLEADING RELATING TO THE CHILD'S COMPETENCY TO
22 PROCEED, SHALL BE SERVED ON THE CHILD'S COUNSEL, THE STATE'S ATTORNEY,
23 THE DEPARTMENT OF JUVENILE SERVICES, AND THE DEPARTMENT OF HEALTH AND
24 MENTAL HYGIENE.

25 3-8A-17.2.

26 (A) THE COURT SHALL SET AND MAY CHANGE THE CONDITIONS UNDER
27 WHICH THE EXAMINATION IS TO BE CONDUCTED.

28 (B) ON CONSIDERATION OF THE NATURE OF THE PETITION, THE COURT MAY
29 REQUIRE THE EXAMINATION TO BE CONDUCTED ON AN OUTPATIENT BASIS IF THE
30 CHILD WAS PREVIOUSLY DETAINED UNDER § 3-8A-15 OF THIS SUBTITLE AND SHALL
31 REQUIRE THE EXAMINATION TO BE CONDUCTED ON AN OUTPATIENT BASIS IF THE
32 CHILD WAS NOT PREVIOUSLY DETAINED UNDER § 3-8A-15 OF THIS SUBTITLE.

33 (C) (1) IF A CHILD WAS PREVIOUSLY DETAINED UNDER § 3-8A-15 OF THIS
34 SUBTITLE, THE COURT MAY ORDER THE CHILD TO CONTINUE TO BE DETAINED
35 BEYOND ANY PERIOD SPECIFIED IN § 3-8A-15 OF THIS SUBTITLE UNTIL THE
36 EXAMINATION IS COMPLETED.

37 (2) IF THE COURT FINDS IT APPROPRIATE FOR THE HEALTH OR SAFETY
38 OF THE CHILD, OR FOR THE SAFETY OF OTHERS, THE COURT MAY ORDER
39 CONFINEMENT OF THE JUVENILE, PENDING THE EXAMINATION, IN A MEDICAL

1 FACILITY THAT THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE DESIGNATES
2 AS APPROPRIATE.

3 3-8A-17.3.

4 (A) (1) THE QUALIFIED EXPERT SHALL EXAMINE THE CHILD AND PREPARE
5 A REPORT STATING WHETHER, IN THE EXPERT'S OPINION, THE CHILD IS
6 INCOMPETENT TO PROCEED.

7 (2) IN CONDUCTING THE EXAMINATION, THE QUALIFIED EXPERT SHALL
8 REVIEW ALL AVAILABLE MEDICAL, EDUCATIONAL, AND COURT RECORDS
9 CONCERNING THE CHILD AND THE CHILD'S CASE.

10 (3) IN DETERMINING WHETHER THE CHILD IS INCOMPETENT TO
11 PROCEED, THE QUALIFIED EXPERT SHALL CONSIDER THE FOLLOWING FACTORS:

12 (I) THE CHILD'S AGE, MATURITY LEVEL, DEVELOPMENTAL STAGE,
13 AND DECISION-MAKING ABILITIES;

14 (II) THE CAPACITY OF THE CHILD TO:

15 1. APPRECIATE THE ALLEGATIONS AGAINST THE CHILD;

16 2. APPRECIATE THE RANGE AND NATURE OF ALLOWABLE
17 DISPOSITIONS THAT MAY BE IMPOSED IN THE PROCEEDINGS AGAINST THE CHILD;

18 3. UNDERSTAND THE ROLES OF THE PARTICIPANTS AND
19 THE ADVERSARY NATURE OF THE LEGAL PROCESS;

20 4. DISCLOSE TO COUNSEL FACTS PERTINENT TO THE
21 PROCEEDINGS AT ISSUE;

22 5. DISPLAY APPROPRIATE COURTROOM BEHAVIOR; AND

23 6. TESTIFY RELEVANTLY; AND

24 (III) ANY OTHER FACTORS THAT THE QUALIFIED EXPERT DEEMS TO
25 BE RELEVANT.

26 (4) THE WRITTEN REPORT SUBMITTED BY THE QUALIFIED EXPERT
27 SHALL:

28 (I) IDENTIFY THE SPECIFIC MATTERS REFERRED FOR
29 EVALUATION;

30 (II) DESCRIBE THE PROCEDURES, TECHNIQUES, AND TESTS USED
31 IN THE EXAMINATION AND THE PURPOSES OF EACH;

32 (III) STATE THE QUALIFIED EXPERT'S CLINICAL OBSERVATIONS,
33 FINDINGS, AND OPINIONS ON EACH FACTOR SPECIFIED IN PARAGRAPH (3) OF THIS

1 SUBSECTION, AND IDENTIFY THOSE FACTORS, IF ANY, ON WHICH THE QUALIFIED
2 EXPERT COULD NOT GIVE AN OPINION; AND

3 (IV) IDENTIFY THE SOURCES OF INFORMATION USED BY THE
4 QUALIFIED EXPERT AND PRESENT THE FACTUAL BASIS FOR THE QUALIFIED
5 EXPERT'S CLINICAL FINDINGS AND OPINIONS.

6 (B) (1) IF THE QUALIFIED EXPERT BELIEVES THAT THE CHILD IS
7 INCOMPETENT TO PROCEED, THE REPORT SHALL DESCRIBE THE TREATMENT THAT
8 THE QUALIFIED EXPERT BELIEVES IS NECESSARY FOR THE CHILD TO ATTAIN
9 COMPETENCY TO PROCEED, AND, IN A SEPARATE REPORT, SHALL STATE WHETHER
10 THE CHILD POSES A DANGER TO THE CHILD OR TO THE PERSON OR PROPERTY OF
11 OTHERS.

12 (2) IN DETERMINING THE TREATMENT THAT IS NECESSARY FOR THE
13 CHILD TO ATTAIN COMPETENCY TO PROCEED, THE QUALIFIED EXPERT SHALL
14 CONSIDER AND REPORT ON THE FOLLOWING:

15 (I) THE MENTAL ILLNESS, MENTAL RETARDATION,
16 DEVELOPMENTAL IMMATURITY, OR OTHER DEVELOPMENTAL DISABILITY CAUSING
17 THE CHILD TO BE INCOMPETENT TO PROCEED;

18 (II) THE TREATMENT OR EDUCATION APPROPRIATE FOR THE
19 MENTAL ILLNESS, MENTAL RETARDATION, DEVELOPMENTAL IMMATURITY, OR
20 OTHER DEVELOPMENTAL DISABILITY OF THE CHILD, AND AN EXPLANATION OF
21 EACH OF THE POSSIBLE TREATMENT OR EDUCATION ALTERNATIVES, IN ORDER OF
22 RECOMMENDATION;

23 (III) THE LIKELIHOOD OF THE CHILD ATTAINING COMPETENCY TO
24 PROCEED UNDER THE TREATMENT OR EDUCATION RECOMMENDED, AN
25 ASSESSMENT OF THE PROBABLE DURATION OF THE TREATMENT REQUIRED TO
26 ATTAIN COMPETENCY, AND THE PROBABILITY THAT THE CHILD WILL ATTAIN
27 COMPETENCY TO PROCEED IN THE FORESEEABLE FUTURE; AND

28 (IV) WHETHER THE CHILD MEETS THE CRITERIA FOR
29 INVOLUNTARY ADMISSION UNDER TITLE 10, SUBTITLE 6, PART III OF THE HEALTH -
30 GENERAL ARTICLE.

31 (C) (1) ALL REPORTS REQUIRED UNDER THIS SECTION SHALL BE FILED
32 WITH THE COURT AND SERVED ON THE CHILD'S COUNSEL, THE STATE'S ATTORNEY,
33 AND THE DEPARTMENT OF JUVENILE SERVICES WITHIN 45 DAYS AFTER THE COURT
34 ORDERS THE EXAMINATION.

35 (2) ON GOOD CAUSE SHOWN, THE COURT MAY EXTEND THE TIME
36 PERIOD SPECIFIED IN PARAGRAPH (1) OF THIS SUBSECTION FOR AN ADDITIONAL 15
37 DAYS.

38 (3) FAILURE OF THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE
39 TO FILE A COMPLETE REPORT WITHIN THE TIME PERIODS SPECIFIED IN THIS

1 SUBSECTION MAY NOT BE, IN AND OF ITSELF, GROUNDS FOR DISMISSAL OF THE
2 PETITION ALLEGING DELINQUENCY.

3 (D) COUNSEL FOR THE CHILD MAY BE PRESENT AT AN EXAMINATION UNDER
4 THIS SECTION.

5 (E) IF THE COURT ORDERS AN EXAMINATION UNDER THIS SECTION, THE
6 DEPARTMENT OF HEALTH AND MENTAL HYGIENE SHALL ENSURE THAT:

7 (1) THE CHILD IS EXAMINED BY A QUALIFIED EXPERT; AND

8 (2) A COMPLETE REPORT BY THE QUALIFIED EXPERT IS FILED WITH
9 THE COURT AND SERVED IN ACCORDANCE WITH SUBSECTION (C) OF THIS SECTION.

10 3-8A-17.4.

11 (A) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,
12 WITHIN 15 DAYS AFTER RECEIPT OF A REPORT OF A QUALIFIED EXPERT, THE COURT
13 SHALL HOLD A COMPETENCY HEARING.

14 (2) ON GOOD CAUSE SHOWN, THE COURT MAY EXTEND THE TIME FOR
15 HOLDING THE COMPETENCY HEARING FOR AN ADDITIONAL 15 DAYS.

16 (B) AT THE COMPETENCY HEARING, THE COURT SHALL DETERMINE, BY
17 EVIDENCE PRESENTED ON THE RECORD, WHETHER THE JUVENILE IS INCOMPETENT
18 TO PROCEED.

19 (C) FINDINGS OF FACT SHALL BE BASED ON THE EVALUATION OF THE CHILD
20 BY THE QUALIFIED EXPERT.

21 (D) THE STATE SHALL BEAR THE BURDEN OF PROVING THE CHILD'S
22 COMPETENCY BEYOND A REASONABLE DOUBT.

23 3-8A-17.5.

24 AT A COMPETENCY HEARING, IF THE COURT DETERMINES THAT THE CHILD IS
25 COMPETENT, THE COURT SHALL ENTER AN ORDER STATING THAT THE CHILD IS
26 COMPETENT, LIFT THE STAY IMPOSED UNDER § 3-8A-17.1 OF THIS SUBTITLE, AND
27 PROCEED WITH THE DELINQUENCY PETITION OR VIOLATION OF PROBATION
28 PETITION IN ACCORDANCE WITH THE TIME PERIODS SPECIFIED IN THIS SUBTITLE
29 AND IN THE MARYLAND RULES.

30 3-8A-17.6.

31 (A) (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, AT A
32 COMPETENCY HEARING, IF THE COURT DETERMINES THAT THE CHILD IS
33 INCOMPETENT TO PROCEED AS A RESULT OF A MENTAL DISORDER, MENTAL
34 RETARDATION, OR A DEVELOPMENTAL DISABILITY BUT MAY BE ABLE TO ATTAIN
35 COMPETENCY IN THE FORESEEABLE FUTURE, THE COURT SHALL ORDER INITIAL

1 SERVICES TO ATTAIN COMPETENCY FOR NOT MORE THAN 3 MONTHS IN A
2 COMMUNITY SETTING OR NONSECURE FACILITY.

3 (2) IF THE COURT DETERMINES THAT THE CHILD IS INCOMPETENT
4 BECAUSE OF DEVELOPMENTAL IMMATURITY, THE COURT SHALL ORDER INITIAL
5 EDUCATION SERVICES TO ATTAIN COMPETENCY FOR NOT MORE THAN 3 MONTHS IN
6 A COMMUNITY OUTPATIENT SETTING.

7 (3) (I) SUBJECT TO THE PROVISIONS OF SUBPARAGRAPH (II) OF THIS
8 PARAGRAPH, IF THE COURT DETERMINES BY CLEAR AND CONVINCING EVIDENCE
9 THAT A CHILD DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION IS A DANGER TO
10 THE CHILD OR THE PERSON OR PROPERTY OF OTHERS, THE COURT SHALL ORDER
11 INITIAL SERVICES TO ATTAIN COMPETENCY FOR NOT MORE THAN 3 MONTHS IN A
12 SECURE FACILITY.

13 (II) FOR A CHILD WITH MENTAL RETARDATION DESCRIBED IN
14 SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE DEPARTMENT OF HEALTH AND
15 MENTAL HYGIENE SHALL DESIGNATE A FACILITY FOR MENTALLY RETARDED
16 CHILDREN AND SHALL REQUIRE THE DEVELOPMENTAL DISABILITIES
17 ADMINISTRATION TO PROVIDE THE SERVICES REQUIRED UNDER THIS PARAGRAPH.

18 (4) (I) SUBJECT TO THE PROVISIONS OF PARAGRAPH (3)(II) OF THIS
19 SUBSECTION, THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE SHALL
20 DESIGNATE THE APPROPRIATE COMMUNITY SETTING OR FACILITY CONSISTENT
21 WITH THE ORDER OF THE COURT.

22 (II) THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE SHALL
23 ENSURE THAT THE CHILD IS PROVIDED SERVICES IN THE LEAST RESTRICTIVE
24 ALTERNATIVE CONSISTENT WITH PUBLIC SAFETY.

25 (III) A CHILD MAY NOT BE:

26 1. PLACED IN ANY FACILITY UNLESS THE CHILD IS PLACED
27 IN ACCOMMODATIONS THAT ARE SEPARATE FROM OTHER PERSONS AT LEAST 18
28 YEARS OLD WHO ARE PLACED IN THAT FACILITY; OR

29 2. TREATED IN ANY GROUP WITH PERSONS WHO ARE AT
30 LEAST 18 YEARS OLD.

31 (B) (1) AFTER COMPLETION OF THE SERVICES REQUIRED UNDER
32 SUBSECTION (A) OF THIS SECTION, THE SERVICE PROVIDER SHALL FILE A REPORT
33 WITH THE COURT STATING WHETHER, IN THE SERVICE PROVIDER'S OPINION, THE
34 CHILD:

35 (I) HAS ATTAINED COMPETENCY;

36 (II) REMAINS INCOMPETENT, BUT MAY BE ABLE TO ATTAIN
37 COMPETENCY IN THE FORESEEABLE FUTURE; OR

1 (III) REMAINS INCOMPETENT, AND IS UNABLE TO ATTAIN
2 COMPETENCY IN THE FORESEEABLE FUTURE.

3 (2) THE COURT SHALL SCHEDULE A COMPETENCY HEARING WITHIN 30
4 DAYS AFTER THE COURT RECEIVES THE REPORT UNDER PARAGRAPH (1) OF THIS
5 SUBSECTION.

6 (C) (1) (I) AT A COMPETENCY HEARING CONDUCTED AFTER SERVICES
7 ARE COMPLETED UNDER THIS SECTION, IF THE COURT DETERMINES THAT THE
8 CHILD IS COMPETENT, THE COURT SHALL PROCEED IN ACCORDANCE WITH §
9 3-8A-17.5 OF THIS SUBTITLE.

10 (II) CASE MANAGEMENT AND SUPERVISION OF THE CHILD SHALL
11 BE TRANSFERRED TO THE DEPARTMENT OF JUVENILE SERVICES TO CONTINUE
12 PROCEEDINGS UNDER THIS SUBTITLE.

13 (III) THE COURT SHALL RETAIN AUTHORITY TO ORDER THE
14 DEPARTMENT OF HEALTH AND MENTAL HYGIENE TO PROVIDE CONTINUED
15 SERVICES TO MAINTAIN COMPETENCY.

16 (2) (I) SUBJECT TO THE TIME PERIODS FOR DISMISSAL OF THE CASE
17 SPECIFIED IN § 3-8A-17.8 OF THIS SUBTITLE, IF THE COURT DETERMINES THAT THE
18 CHILD REMAINS INCOMPETENT TO PROCEED, BUT THAT THE CHILD MAY BE ABLE TO
19 ATTAIN COMPETENCY IN THE FORESEEABLE FUTURE, THE COURT MAY CONTINUE
20 SERVICES IN ACCORDANCE WITH THIS SECTION IN INCREMENTS OF NOT MORE THAN
21 6 MONTHS.

22 (II) AFTER COMPLETION OF ANY ADDITIONAL SERVICES ORDERED
23 UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE SERVICE PROVIDER SHALL
24 FILE A REPORT WITH THE COURT AND THE COURT SHALL SCHEDULE A
25 COMPETENCY HEARING IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION.

26 (D) AT A COMPETENCY HEARING CONDUCTED AFTER SERVICES ARE
27 COMPLETED UNDER THIS SECTION, IF THE COURT DETERMINES THAT THE CHILD IS
28 UNABLE TO ATTAIN COMPETENCY IN THE FORESEEABLE FUTURE, THE COURT
29 SHALL PROCEED UNDER § 3-8A-17.7 OF THIS SUBTITLE.

30 3-8A-17.7.

31 AT A COMPETENCY HEARING, IF THE COURT DETERMINES THAT THE CHILD IS
32 UNABLE TO ATTAIN COMPETENCY IN THE FORESEEABLE FUTURE, THE COURT:

33 (1) MAY:

34 (I) ORDER THAT PROCEEDINGS FOR INVOLUNTARY ADMISSION
35 UNDER TITLE 10, SUBTITLE 6, PART III OF THE HEALTH - GENERAL ARTICLE BE
36 INSTITUTED, IF APPROPRIATE;

37 (II) ORDER SERVICES TO BE PROVIDED TO THE CHILD; OR

1 (III) DISMISS THE DELINQUENCY PETITION OR VIOLATION OF
2 PROBATION PETITION; AND

3 (2) UNLESS THE COURT FINDS THAT THE CHILD IS A DANGER TO THE
4 CHILD OR THE PERSON OR PROPERTY OF OTHERS, SHALL RELEASE THE CHILD FROM
5 ANY FACILITY.

6 3-8A-17.8.

7 (A) UNLESS THE CASE IS DISMISSED UNDER § 3-8A-17.7 OF THIS SUBTITLE, AT
8 A COMPETENCY HEARING, IF THE COURT DETERMINES THAT A CHILD IS
9 INCOMPETENT TO PROCEED IN THE FORESEEABLE FUTURE, THE COURT SHALL
10 RETAIN JURISDICTION OF THE CHILD FOR NOT MORE THAN 3 YEARS AFTER THE
11 DATE OF THE ORDER OF INCOMPETENCY IF THE CHILD IS ALLEGED TO HAVE
12 COMMITTED AN ACT THAT WOULD BE A FELONY IF COMMITTED BY AN ADULT, AND
13 UP TO 1 YEAR AFTER THE DATE OF THE ORDER OF INCOMPETENCY IF THE CHILD IS
14 ALLEGED TO HAVE COMMITTED AN ACT THAT WOULD BE A MISDEMEANOR IF
15 COMMITTED BY AN ADULT OR IS ALLEGED TO HAVE VIOLATED PROBATION.

16 (B) AT THE END OF ANY PERIOD SPECIFIED IN SUBSECTION (A) OF THIS
17 SECTION, IF THE CHILD HAS NOT ATTAINED COMPETENCY, THE COURT:

18 (1) SHALL DISMISS THE DELINQUENCY PETITION OR THE VIOLATION OF
19 PROBATION PETITION; AND

20 (2) MAY ORDER THAT PROCEEDINGS FOR INVOLUNTARY ADMISSION
21 UNDER TITLE 10, SUBTITLE 6, PART III OF THE HEALTH - GENERAL ARTICLE BE
22 INSTITUTED, IF APPROPRIATE.

23 3-8A-17.9.

24 (A) AT ANY TIME BEFORE AN ADJUDICATION UNDER THIS SUBTITLE, A
25 HEARING ON A PRELIMINARY MOTION ON ANOTHER ISSUE, INCLUDING AN
26 OBJECTION TO THE SUFFICIENCY OF THE PETITION, MAY BE CONDUCTED WITHOUT
27 THE CHILD BEING PRESENT IF THE CHILD'S TESTIMONY IS NOT REQUIRED.

28 (B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, ANY
29 STATEMENT MADE BY THE CHILD OR INFORMATION ELICITED DURING A
30 COMPETENCY HEARING OR IN CONNECTION WITH THE DETERMINATION OF
31 COMPETENCY UNDER THIS SUBTITLE, AND ANY REPORT PREPARED BY A QUALIFIED
32 EXPERT, MAY NOT BE ADMITTED IN EVIDENCE IN ANY PROCEEDING EXCEPT A
33 PROCEEDING RELATING TO THE CHILD'S COMPETENCY TO PROCEED.

34 (2) PARAGRAPH (1) OF THIS SUBSECTION DOES NOT APPLY IF THE
35 COUNSEL FOR THE CHILD INTRODUCES THE REPORT OF THE QUALIFIED EXPERT, OR
36 ANY PART OF IT, IN ANY HEARING OTHER THAN A COMPETENCY HEARING.

1 3-8A-17.10.

2 THE SECRETARY OF HEALTH AND MENTAL HYGIENE AND THE SECRETARY OF
3 JUVENILE SERVICES SHALL JOINTLY ADOPT REGULATIONS TO CARRY OUT THE
4 PROVISIONS OF THIS SUBTITLE RELATING TO COMPETENCY.

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 October 1, 2004.